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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6812
DATE COMPLAINT FILED: 4/25/14
DATES OF NOTIFICATION: 4/30/14 and
5/7/14
LAST RESPONSE RECEIVED: 6/24/2014
DATE ACTIVATED: 8/27/14

EXPIRATION OF SOL: 7/10/17
ELECTION CYCLE: 2012

COMPLAINANT:

Jeffrey Richmond

RESPONDENTS:

Penn Line Services, Inc.

Laborers' International Union of North America

Laborers' International Union, Local 453

Laborers' International Union of North America
PAC f/k/a Laborers' Political League and
Armand E. Sabitoni in his official capacity as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(11)¹
52 U.S.C. § 30118(a)
52 U.S.C. § 30118(b)(2)(C), (b)(3), (b)(4)(A)(ii)
11 C.F.R. § 114.2(b), (d)
11 C.F.R. § 114.5(a)
11 C.F.R. § 114.5(g)(2)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

I. INTRODUCTION

Complainant, Jeffrey Richmond ("Richmond"), a former employee of Respondent Penn Line Services, Inc. ("Penn Line"), alleges that Penn Line unlawfully deducted \$11.51 from his pay and transferred the money to Respondents Laborers' International Union of North America ("LIUNA") and its local chapter, Laborers' International Union, Local 453 ("Local 453") (collectively, "the Unions") for political contributions to LIUNA's separate segregated fund ("SSF") before Richmond became a member of the Unions. Richmond also claims that Penn Line fired him for not authorizing additional deductions to the SSF, Laborers' International Union of North America PAC ("LIUNA PAC"). The Respondents do not deny the allegations, but Penn Line asserts that Richmond has been made whole through settlements in a West Virginia state court and before the National Labor Relations Board ("NLRB"). The Unions assert that they were unaware of Penn Line's actions and should not be held responsible for them.

We recommend that the Commission find reason to believe that Penn Line coerced contributions in violation of the Act and the Commission's regulations and approve the attached conciliation agreement. Penn Line's actions are undisputed, its violations were egregious, and it has not admitted liability in either of the earlier proceedings. We also recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations as to LIUNA PAC, LIUNA, and Local 453 because the Unions' SSF authorization form solicited only voluntary contributions from union members, Penn Line appears to have acted contrary to the disclaimers on the Unions' forms, the activity appears to have been limited to two employees with only a small resulting benefit to the Unions, and the Unions have taken remedial actions to prevent future occurrences. We also recommend that the

1 Commission send the Unions and the SSF appropriate reminder letters and close the file as to
2 them.

3 **II. FACTS**

4
5 Penn Line is a Pennsylvania corporation that operates a construction business in West
6 Virginia. Penn Line Resp. at 1; LIUNA Resp.² at 1; Local 453 Resp. at 1. LIUNA is an
7 international labor organization, and the majority of its members are construction workers.
8 LIUNA Resp. at 1; Local 453 Resp. at 1. Local 453, an affiliate of LIUNA, represents Penn
9 Line workers. LIUNA Resp. at 1; Local 453 Resp. at 1. LIUNA PAC is an SSF connected
10 with LIUNA. LIUNA Resp. at 1; *see* Amended Statement of Organization (filed October 8,
11 2014).

12 On July 10, 2012, Orvil Walls, a Penn Line supervisor, hired Richmond as a
13 driver/laborer. Jeffrey Richmond Aff. at 1 (Apr. 21, 2014) ("Richmond Aff."). Although
14 Walls told Richmond over the phone that the position was a "union job," Richmond was not
15 given an application to join Local 453. *Id.* at 1-2. When Richmond got his first paycheck
16 around July 20, 2012, he noticed several deductions labeled "Employee Assm" and
17 "Employee Dedu." *Id.* at 2. Richmond called Jamie Gross of Penn Line's Payroll
18 Department, who told Richmond that the deductions were union deductions. *Id.* The
19 deductions included political contributions to LIUNA PAC, a state SSF called West Virginia
20 Laborers District Council PAC, and an entity called Laborers Organizing Fund. Compl. at 2,
21 Attach. 3; Penn Line Resp. at 2.

22 In July or August 2012, Richmond spoke with "a man" at Local 453's office about
23 joining the union, who told him to have Penn Line contact Local 453 directly. Richmond Aff.

² LIUNA and LIUNA PAC filed a joint response, which we refer to as the "LIUNA Resp."

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1 at 3. Richmond relayed that instruction to Gross. *Id.* On or about October 1, 2012,
2 Richmond received a union membership form in the mail from Gross. *Id.* Richmond signed
3 the portion of the form to join the union because Walls and other coworkers told him that
4 union membership was required. *Id.* The union membership form included a payroll
5 deduction section for political contributions to LIUNA PAC. That section stated that such
6 deductions were voluntary, the individual could refuse to contribute without reprisal, the
7 union could not favor or disadvantage the employee based on his or her refusal or the amount
8 of the contribution, the contributions would be used for political expenditures or contributions
9 to federal, state, or local elections, and the dollar amounts on the form were merely
10 suggestions. *Id.*, Attach. 1.

11 Richmond submitted the completed union form, but he did not sign the section
12 authorizing deductions to LIUNA PAC. Richmond Aff. at 3, Attach. 1. On October 15,
13 2012, Walls informed Richmond that his union form was being returned to him to authorize
14 SSF deductions, and that he had to do so. *Id.* The next day, Richmond told Walls that he
15 would not authorize the deductions "for moral reasons," and Walls told him that "it was up to
16 [him]." *Id.* About three hours later, however, Walls told Richmond that he had been told that
17 he could "take [Richmond] home" if he "would not join the Unions."³ *Id.* Richmond refused
18 again, Walls took him home, and Penn Line fired him. *Id.* At the time Penn Line fired
19 Richmond, it had deducted \$11.51 in unauthorized federal contributions to LIUNA PAC from
20 his pay.⁴

³ Presumably, Walls was referring to Richmond authorizing future SSF contributions because Richmond had already agreed to join the unions.

⁴ Penn Line deducted a total of \$827.47 in union dues/fees and political contributions to the Unions' state and federal SSFs from Complainant's wages during his employment.

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1 Richmond filed two lawsuits following his termination — one against Penn Line in
2 state court and another against Penn Line and Local 453 with the NLRB. Penn Line Resp. at
3 2; LIUNA Resp. at 2; Local 453 Resp. at 4. Both actions were resolved through settlement
4 agreements. *Id.* In the state court settlement, Penn Line paid \$928.98 to Richmond and
5 \$2,400 to his lawyers, but it did not admit liability. Penn Line Resp. at 2, Ex. B at 1, 3. In the
6 NLRB settlement, Penn Line paid Richmond \$10,401.77 (\$9,000 for back pay, \$388 for
7 medical expenses, \$78.70 for uniforms, \$107.60 in interest, and \$827.47 for withheld union
8 dues and political deductions). Penn Line Resp. at 2. Local 453 also reimbursed Richmond
9 \$45.44 for state and federal political deductions. Local 453 Resp. at 4.

10 As part of the NLRB settlement, Penn Line and Local 453 agreed to take prospective
11 remedial measures. Penn Line Resp. at 3; Local 453 Resp. at 4. Penn Line agreed to stop
12 coercing political contributions to LIUNA PAC, to provide training to its field personnel, and
13 to mail and post notices of employees' federal labor rights at prominent sites at the company.
14 Penn Line Resp. at 3, Ex. F. Local 453 agreed to mail and post similar notices, to stop using
15 Penn Line to distribute its political contribution form, and to stop accepting SSF contributions
16 from Penn Line without the required authorization. Local 453 Resp. at 4, Attach 1; LIUNA
17 Resp. at 3. All Respondents note that the NLRB settlement is not an admission of liability.
18 Penn Line Resp. at 2; LIUNA Resp. at 3; Local 453 Resp. at 4.

19 During the NLRB action, Penn Line also investigated whether there may have been
20 other instances of unauthorized deductions, it determined there may have been one other
21 instance, and it reimbursed that employee \$36.62. Penn Line Resp. at 3. Respondents did not
22 provide additional details regarding that employee's payroll deductions.

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1 Penn Line does not deny the unauthorized payroll deductions, Walls's coercive actions
2 seeking authorization for SSF deductions, or the wrongful termination. Penn Line Resp.
3 Instead, Penn Line asserts that Richmond has been made whole by the two civil settlements
4 and that it has instituted measures to prevent future occurrences. Penn Line Resp. at 3. Penn
5 Line also notes that it offered Richmond his job back, but he refused. *Id.* at 2, 3. Penn Line
6 asks the Commission to dismiss the case or refer it to the Alternative Dispute Resolution
7 Office. *Id.* at 3. Alternatively, it asks for pre-probable cause conciliation. *Id.*

8 The Unions assert that they were unaware of Penn Line's actions, and they should not
9 be held responsible for them because Penn Line was not their agent. The Unions also note
10 that their SSF deduction form properly informs employees of their rights. LIUNA Resp. at 2,
11 4; Local 453 Resp. at 2-3. Local 453 states that it receives only union dues and did not
12 receive the alleged LIUNA PAC deductions. Local 453 Resp. at 2-3. LIUNA PAC further
13 states that, in an abundance of caution, it would reimburse the \$11.51 settlement payments
14 Penn Line and Local 453 made to Richmond. LIUNA Resp. at 3.

15 III. LEGAL ANALYSIS

16 Under the Act and the Commission's regulations, labor organizations are prohibited
17 from making a contribution in connection with a federal election, and a political committee is
18 prohibited from knowingly accepting or receiving such contributions. 52 U.S.C § 30118(a)
19 (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (d). Labor organizations are permitted
20 to establish and solicit political contributions to an SSF. 52 U.S.C § 30118(b)(2)(C)
21 (formerly 2 U.S.C. § 441b(b)(2)(C)); 11 C.F.R. § 114.1(a)(2)(iii). A labor organization or its
22 SSF may only solicit contributions from the organization's members and their families.

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1 52 U.S.C § 30118(b)(4)(A)(ii) (formerly 2 U.S.C. § 441b(b)(4)(A)(ii)); 11 C.F.R.

2 § 114.5(g)(2).

3 An SSF is prohibited from making contributions or expenditures "by utilizing money
4 or anything of value secured by physical force, job discrimination, or financial reprisals, or
5 the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
6 required as a condition of membership in a labor organization or as a condition of
7 employment" 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)); *see also*
8 11 C.F.R. § 114.5(a)(1) (same). All contributions to an SSF must be voluntary and without
9 coercion. *See* 52 U.S.C § 30118(b)(3) (formerly 2 U.S.C. § 441b(b)(3)); 11 C.F.R.
10 § 114.5(a); *see also* Advisory Op. 2003-14 (Home Depot) (same). To ensure that
11 contributions solicited for an SSF are voluntary, the Act and the Commission's regulations
12 make it unlawful for any person to solicit a contribution to an SSF without informing the
13 employee of the political purpose of the SSF and of the right to refuse to contribute to the SSF
14 without reprisal. 52 U.S.C § 30118(b)(3)(B)-(C) (formerly 2 U.S.C. § 441b(b)(3)(B)-(C) and
15 11 C.F.R. § 114.5(a)(3)-(4)). The term "person" includes a corporation or a labor
16 organization. 52 U.S.C § 30101(11) (formerly 2 U.S.C. § 431(11)). In addition, if the SSF or
17 connected organization suggests a guideline for contribution amounts, the solicitation must
18 state that the guideline is merely a suggestion, that the member is free to contribute more or
19 less than the guideline suggests, and that the union will not favor or disadvantage anyone
20 because of the amount of the contribution or a decision not to contribute. 11 C.F.R.
21 § 114.5(a)(2), (5). A solicitation may be coercive if the requisite notices are not given. *See*
22 Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat'l Bank) (conciliating
23 prohibited facilitation of national bank contributions to a state SSF).

1 **A. Penn Line Coerced Contributions to LIUNA PAC**

2
3 By its own admission, Penn Line deducted political contributions to LIUNA PAC
4 from Richmond's pay before he was a union member without his permission and without
5 giving him the required notices. Penn Line eventually asked Richmond for permission, but it
6 threatened his job when he refused, and it made good on that threat when Richmond did not
7 obey. Therefore, we recommend that the Commission find reason to believe that Penn Line
8 violated 52 U.S.C § 30118(b)(3)(B) and (C) (formerly 2 U.S.C. § 441b(b)(3)(B) and (C)) and
9 11 C.F.R. § 114.5(a)(3) and (4).⁵ See Factual & Legal Analysis at 7, MUR 6621 (American
10 Hotel & Lodging Assoc.) (trade association failed to inform solicitees of the political purpose
11 of its SSF and the right to refuse to contribute without reprisal).⁶

12 Richmond also alleges that Penn Line violated 52 U.S.C § 30118(b)(3)(A) (formerly
13 2 U.S.C. § 441b(b)(3)(A)) by making a contribution secured by job discrimination and the
14 threat of job discrimination. We do not recommend, however, that the Commission find
15 reason to believe that Penn Line violated that provision of the Act or 11 C.F.R. § 114.5(a)(1),
16 because there is no basis on which to conclude that Penn Line made a contribution under

⁵ There may be a question whether Penn Line also illegally solicited the pre-October 1, 2012, contributions. Even if the pre-October contributions were illegally solicited, we believe it is sufficient for liability purposes that Richmond was solicited for contributions to LIUNA PAC after he was given the authorization form later in October 2012.

⁶ As a "person" under the Act, Walls may be individually liable for soliciting involuntary contributions under 52 U.S.C § 30118(b)(3)(B) and (C) (formerly 2 U.S.C. § 441b(b)(3)(B) and (C)) and 11 C.F.R. § 114.5(a)(3) and (4). In a recent case, the Commission did not impose such liability against an individual corporate official, and we do not recommend that it do so here considering the information suggesting that Walls was directed to fire Richmond by a superior official. See Richmond Aff. at 3, Pre-Probable Cause Conciliation Memorandum at 2, n. 1, MUR 6621 (American Hotel & Lodging Assoc) (dismissal regarding corporate official who participated in involuntary solicitations where settlement with corporation); Certification, MUR 6621 (Oct. 22, 2013). *But cf.* Conciliation Agreement, MUR 5337 (First Consumers Nat'l Bank) (Conciliation with both national bank and its former president for prohibited facilitation of national bank contributions to a state SSF).

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1 these provisions when it deducted money from Richmond's pay and transferred it to LIUNA
2 PAC.⁷

3 **B. The Unions and LIUNA PAC Did Not Appear to Know of or Authorize**
4 **the Coerced Contributions at the Relevant Times**
5

6 Richmond alleges that the Unions and LIUNA PAC unlawfully received and used the
7 unauthorized and involuntary contributions deducted from his wages before and after he
8 became a member of the Unions. Although it is undisputed that Penn Line deducted and
9 transferred these funds for LIUNA PAC, the Unions assert that they were unaware of Penn
10 Line's actions, they did not authorize them, and Penn Line was not their agent. Though the
11 Commission has found principals liable for agents' acts within the scope of their actual
12 authority, the unusual facts of this case — a corporation coercing contributions to a *union's*
13 SSF — suggest that the Commission should not do so here.

14 Neither the Act nor the Commission's regulations includes a general definition of
15 agent.⁸ The Commission, however, has defined the term "agent" in regulations addressing
16 coordinated and independent expenditures at 11 C.F.R. § 109.3 and the soft money ban at
17 11 C.F.R. § 300.2(b). The Commission has defined "agent" for purposes of implementing the
18 Bipartisan Campaign Reform Act of 2002 as "any person who has actual authority, either
19 express or implied." *See* 11 C.F.R. §§ 109.3, 300.2(b). The Commission has explained that
20 "actual authority is created by manifestations of consent (express or implied) made by the

⁷ As the Act's SSF provisions specifically and sufficiently address Penn Line's coercion, we also do not believe it necessary to evaluate whether Penn Line also facilitated the making of a contribution under 11 C.F.R. § 114.2(f)(2)(iv).

⁸ It does not appear that Penn Line would qualify as LIUNA PAC's collecting agent because it is not related to that SSF. *See* 11 C.F.R. § 102.6(b)(1); Advisory Opinion 1998-25 (Mason Tenders) (by definition, a collecting agent must be related to the SSF and may include such entities as the connected organization of the SSF and a branch or local unit of the connected organization). In this case, the Unions themselves could be collecting agents for LIUNA PAC. *See* 11 C.F.R. § 102.6(b)(1)(iv).

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1 principal to the *agent*." See 71 Fed. Reg. at 4976 (citing Restatement (Second) of Agency
2 § 710 (1958) (emphasis in original). The Commission has recognized that "... a person may
3 be an agent as a result of actual authority based on his or her position or title within a
4 campaign organization, political party committee, or other political committee." 71 Fed. Reg.
5 at 4978. A candidate need not explicitly instruct an agent to perform a particular activity on
6 his or her behalf because actual authority can be established by implication. *Id.* (stating that
7 the definition "capture[s] actions by individuals acting under indirect signals from a
8 candidate"). Thus, the Commission's determination turns on the particular facts.

9 Under this case's facts, it is unclear whether Penn Line is an agent of the Unions or
10 LIUNA PAC under any of the Commission's definitions.⁹ The record does not reflect what
11 actual authority Penn Line had regarding the payroll deductions. The only information we
12 have is Richmond's statement that someone at Local 453's office told him to have Penn Line
13 contact the union so he could join, and his statement that Penn Line sent him the payroll
14 deduction form weeks later. Although it is likely that Penn Line had the authority to
15 distribute the Unions' payroll deduction form and to deduct authorized contributions to
16 LIUNA PAC, it is highly doubtful that Penn Line had actual authority to start making union
17 deductions before Richmond was even a union member. Similarly, Penn Line very likely did
18 not have actual authority from the Unions to threaten and fire Richmond in contravention of
19 the Unions' own forms, and there is no information implying that the Unions urged Penn Line
20 to ignore the language on the forms. In addition, the record does not show that the Unions or
21 LIUNA PAC were involved in Richmond's hiring or firing or that Penn Line's actions were
22 part of a widespread company practice. Considering the notices on the Unions' SSF

⁹ Walls very likely was an agent of Penn Line.

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1 authorization form and in the absence of evidence of a tacit agreement to ignore those notices,
2 we do not recommend that the Commission hold the Unions responsible for Penn Line's
3 actions.

4 Even if we were to conclude that the Unions or LIUNA PAC are liable for Penn
5 Line's actions, we do not believe further enforcement action is warranted because the Unions'
6 SSF authorization form solicited only voluntary contributions from union members, Penn
7 Line appears to have acted contrary to the disclaimers on the Unions' forms, the activity —
8 though egregious — appears to have been limited to two employees with only small monetary
9 benefits to the Unions, and the Unions have taken remedial actions to prevent future
10 occurrences. Therefore, we recommend that the Commission exercise its prosecutorial
11 discretion to dismiss the allegations as to LIUNA PAC f/k/a Laborers' Political League and
12 Armand E. Sabitoni in his official capacity as treasurer, LIUNA, and Local 453; remind them
13 of the requirements of the Act and the Commission's regulations regarding solicitations to an
14 SSF, and close the file as to them. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

15 **IV. CONCILIATION WITH PENN LINE IS APPROPRIATE**

16 Penn Line's violation is clear, and the underlying facts are undisputed. Although the
17 amount Penn Line deducted from Richmond's pay for SSF contributions was small, its
18 actions — deducting contributions without permission; threatening and firing an employee for
19 not authorizing deductions — are egregious. And while Penn Line points in mitigation to the
20 monies it has already paid Richmond and to its other remedial measures, Penn Line's
21 response establishes that it has not admitted liability for its actions in any forum. Therefore,
22 to vindicate the Act and the Commission's regulations, we recommend that the Commission

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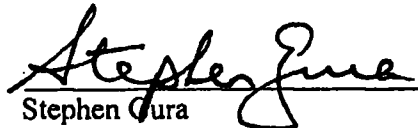
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1. Find reason to believe that Penn Line Services, Inc. violated 52 U.S.C § 30118(b)(3)(B) and (C) (formerly 2 U.S.C. § 441b(b)(3)(B) and (C)) and 11 C.F.R. § 114.5(a)(3) and (4).
2. Dismiss the allegations as to Laborers' International Union of North America PAC f/k/a Laborers' Political League and Armand E. Sabitoni in his official capacity as


1 treasurer, Laborers' International Union of North America, and Laborers'
2 International Union, Local 453; remind them of the requirements of the Act and the
3 Commission's regulations regarding solicitations to an SSF; and close the file as to
4 them.

- 5
6 3. Approve the attached Factual and Legal Analyses.
7
8 4. Enter into conciliation with Penn Line prior to a finding of probable cause to
9 believe.
10
11 5. Approve the attached proposed conciliation agreement.
12
13 6. Approve the appropriate letters.
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18

19 11.25.14
20 Date

21 
22 Stephen Gura
23 Deputy Associate General Counsel
24 for Enforcement

25 
26 Mark Shonkwiler
27 Assistant General Counsel

28 
29 Kamau Philbert
30 Attorney
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32
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34 Attachments:
35 (1) Factual and Legal Analysis – Penn Line
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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 RESPONDENTS: Laborers' International Union of North America MUR: 6812

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8 Laborers' International Union of North America PAC
9 f/k/a Laborers' Political League and Armand E. Sabitoni
10 in his official capacity as treasurer
11
12

13 **I. INTRODUCTION**

14 Complainant, Jeffrey Richmond ("Richmond"), a former employee of Respondent Penn
15 Line Services, Inc. ("Penn Line"), alleges that Penn Line unlawfully deducted \$11.51 from his
16 pay and transferred the money to Respondent Laborers' International Union of North America
17 ("LIUNA") for political contributions to LIUNA's separate segregated fund ("SSF"), Laborers'
18 International Union of North America PAC ("LIUNA PAC"), before Richmond became a
19 member of the union. Richmond also claims that Penn Line fired him for not authorizing
20 additional deductions to the SSF. LIUNA and LIUNA PAC do not deny the allegations, but they
21 assert that they were unaware of Penn Line's actions and should not be held responsible for
22 them.

23 Based on the available information, the Commission exercises its prosecutorial discretion
24 and dismisses the allegations as to LIUNA and LIUNA PAC because the union's SSF
25 authorization form solicited only voluntary contributions from union members, Penn Line
26 appears to have acted contrary to the disclaimers on the union's form, the activity appears to
27 have been limited to two employees with only a small resulting benefit to the union, and the
28 union has taken remedial actions to prevent future occurrences. The Commission also reminds

1 the union and the SSF of the requirements of the Act and the Commission's regulations
2 regarding solicitations to an SSF and closes the file as to them.

3 **II. FACTS**

4
5 Penn Line is a Pennsylvania corporation that operates a construction business in West
6 Virginia. LIUNA Resp.¹ at 1. LIUNA is an international labor organization, and the majority of
7 its members are construction workers. LIUNA Resp. at 1. Laborers' International Union, Local
8 453 ("Local 453"), an affiliate of LIUNA, represents Penn Line workers. LIUNA Resp. at 1.
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10 Organization (filed October 8, 2014).

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12 driver/laborer. Jeffrey Richmond Aff. at 1 (Apr. 21, 2014) ("Richmond Aff."). Although Walls
13 told Richmond over the phone that the position was a "union job," Richmond was not given an
14 application to join Local 453. *Id.* at 1-2. When Richmond got his first paycheck around July 20,
15 2012, he noticed several deductions labeled "Employee Assm" and "Employee Dedu." *Id.* at 2.
16 Richmond called Jamie Gross of Penn Line's Payroll Department, who told Richmond that the
17 deductions were union deductions. *Id.* The deductions included political contributions to
18 LIUNA PAC, a state SSF called West Virginia Laborers District Council PAC, and an entity
19 called Laborers Organizing Fund. Compl. at 2, Attach. 3.

20 In July or August 2012, Richmond spoke with "a man" at Local 453's office about
21 joining the union, who told him to have Penn Line contact Local 453 directly. Richmond Aff.
22 at 3. Richmond relayed that instruction to Gross. *Id.* On or about October 1, 2012, Richmond

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1 received a union membership form in the mail from Gross. *Id.* Richmond signed the portion of
2 the form to join the union because he claims Walls and other coworkers told him that union
3 membership was required. *Id.* The union membership form included a payroll deduction section
4 for political contributions to LIUNA PAC. That section stated that such deductions were
5 voluntary, the individual could refuse to contribute without reprisal, the union could not favor or
6 disadvantage the employee based on his or her refusal or the amount of the contribution, the
7 contributions would be used for political expenditures or contributions to federal, state, or local
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14 About three hours later, however, Walls told Richmond that he had been told that he could "take
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16 him home, and Penn Line fired him. *Id.* At the time Penn Line fired Richmond, it had deducted
17 \$11.51 in unauthorized federal contributions to LIUNA PAC from his pay.³

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19 court and another against Penn Line and Local 453 with the NLRB. LIUNA Resp. at 2. Both

² Presumably, Walls was referring to Richmond authorizing future SSF contributions because Richmond had already agreed to join the union.

³ Penn Line deducted a total of \$827.47 in union dues/fees and political contributions to state and federal SSFs from Richmond's wages during his employment.

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1 actions were resolved through settlement agreements. *Id.* Available information shows that
2 Penn Line paid \$928.98 to Richmond and \$2,400 to his lawyers in the state court settlement, but
3 it did not admit liability. Penn Line also paid Richmond \$10,401.77 (for back pay, medical
4 expenses, uniforms, interest, and withheld union dues and political deductions) in the NLRB
5 settlement. Respondents note that the NLRB settlement is not an admission of liability. LIUNA
6 Resp. at 3.

7 During the NLRB action, it was further determined that there may have been one other
8 instance of unauthorized deductions, and that employee was reimbursed \$36.62. Additional
9 details regarding that employee's payroll deductions were not provided.

10 The unauthorized payroll deductions, Walls's coercive actions seeking authorization for
11 SSF deductions, and the wrongful termination are undisputed. Respondents, however, assert that
12 they were unaware of Penn Line's actions, and they should not be held responsible for them
13 because Penn Line was not their agent. They also note that their SSF deduction form properly
14 informs employees of their rights. LIUNA Resp. at 2, 4. LIUNA PAC further states that, in an
15 abundance of caution, it would reimburse the \$11.51 settlement payments Penn Line and Local
16 453 made to Richmond. LIUNA Resp. at 2.

17 **III. LEGAL ANALYSIS**

18 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and the
19 Commission's regulations, labor organizations are prohibited from making a contribution in
20 connection with a federal election, and a political committee is prohibited from knowingly

1 accepting or receiving such contributions. 52 U.S.C § 30118(a) (formerly 2 U.S.C. § 441b(a));⁴
2 11 C.F.R. § 114.2(b), (d). Labor organizations are permitted to establish and solicit political
3 contributions to an SSF. 52 U.S.C § 30118(b)(2)(C) (formerly 2 U.S.C. § 441b(b)(2)(C));
4 11 C.F.R. § 114.1(a)(2)(iii). A labor organization or its SSF may only solicit contributions from
5 the organization's members and their families. 52 U.S.C § 30118(b)(4)(A)(ii) (formerly
6 2 U.S.C. § 441b(b)(4)(A)(ii)); 11 C.F.R. § 114.5(g)(2).

7 An SSF is prohibited from making contributions or expenditures "by utilizing money or
8 anything of value secured by physical force, job discrimination, or financial reprisals, or the
9 threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
10 required as a condition of membership in a labor organization or as a condition of employment
11" 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)); *see also*
12 11 C.F.R. § 114.5(a)(1) (same). All contributions to an SSF must be voluntary and without
13 coercion. *See* 52 U.S.C § 30118(b)(3) (formerly 2 U.S.C. § 441b(b)(3)); 11 C.F.R. § 114.5(a);
14 *see also* Advisory Op. 2003-14 (Home Depot) (same). To ensure that contributions solicited for
15 an SSF are voluntary, the Act and the Commission's regulations make it unlawful for any person
16 to solicit a contribution to an SSF without informing the employee of the political purpose of the
17 SSF and of the right to refuse to contribute to the SSF without reprisal. 52 U.S.C
18 § 30118(b)(3)(B)-(C) (formerly 2 U.S.C. § 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(3)-(4)).
19 The term "person" includes a corporation or a labor organization. 52 U.S.C § 30101(11)
20 (formerly 2 U.S.C. § 431(11)). In addition, if the SSF or connected organization suggests a
21 guideline for contribution amounts, the solicitation must state that the guideline is merely a

⁴ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 suggestion, that the member is free to contribute more or less than the guideline suggests, and
2 that the union will not favor or disadvantage anyone because of the amount of the contribution or
3 a decision not to contribute. 11 C.F.R. § 114.5(a)(2), (5). A solicitation may be coercive if the
4 requisite notices are not given. *See* Conciliation Agreement IV.7, MUR 5337 (First Consumers
5 Nat'l Bank) (conciliating prohibited facilitation of national bank contributions to a state SSF).

6 Richmond alleges that Respondents unlawfully received and used the unauthorized and
7 involuntary contributions deducted from his wages before and after he became a member of the
8 Unions. Although it is undisputed that Penn Line deducted and transferred these funds for
9 LIUNA PAC, Respondents assert that they were unaware of Penn Line's actions, did not
10 authorize them, and that Penn Line was not their agent. Though the Commission has found
11 principals liable for agents' acts within the scope of their actual authority, the unusual facts of
12 this case — a corporation coercing contributions to a *union's* SSF — suggest that it would not be
13 appropriate to do so here.

14 Neither the Act nor the Commission's regulations includes a general definition of agent.⁵
15 The Commission, however, has defined the term "agent" in regulations addressing coordinated
16 and independent expenditures at 11 C.F.R. § 109.3 and the soft money ban at 11 C.F.R.
17 § 300.2(b). The Commission has defined "agent" for purposes of implementing the Bipartisan
18 Campaign Reform Act of 2002 as "any person who has actual authority, either express or
19 implied." *See* 11 C.F.R. §§ 109.3, 300.2. The Commission has explained that "actual authority

⁵ It does not appear that Penn Line would qualify as LIUNA PAC's collecting agent because it is not related to that SSF. *See* 11 C.F.R. § 102.6(b)(1); Advisory Opinion 1998-25 (Mason Tenders) (by definition, a collecting agent must be related to the SSF and may include such entities as the connected organization of the SSF and a branch or local unit of the connected organization). In this case, LIUNA could be a collecting agent for LIUNA PAC. *See* 11 C.F.R. § 102.6(b)(1)(iv).

1 is created by manifestations of consent (express or implied) made by the principal to the agent.”
2 See 71 Fed. Reg. at 4976 (citing Restatement (Second) of Agency § 710 (1958)). The
3 Commission has recognized that “a person may be an agent as a result of actual authority based
4 on his or her position or title within a campaign organization, political party committee, or other
5 political committee.” 71 Fed. Reg. at 4978. A candidate need not explicitly instruct an agent to
6 perform a particular activity on his or her behalf because actual authority can be established by
7 implication. *Id.* (stating that the definition “capture[s] actions by individuals acting under
8 indirect signals from a candidate”). Thus, the Commission’s determination turns on the
9 particular facts.

10 Under this case’s facts, it is unclear whether Penn Line is an agent of LIUNA or LIUNA
11 PAC under any of the Commission’s definitions.⁶ The record does not reflect what actual
12 authority Penn Line had regarding the payroll deductions. The available information consists of
13 Richmond’s statement that someone at Local 453’s office told him to have Penn Line contact the
14 union so he could join, and his statement that Penn Line sent him the payroll deduction form
15 weeks later. Although it is likely that Penn Line had the authority to distribute the payroll
16 deduction form and to deduct authorized contributions to LIUNA PAC, it is highly doubtful that
17 Penn Line had actual authority to start making union deductions before Richmond was even a
18 union member. Similarly, Penn Line very likely did not have actual authority from Respondents
19 to threaten and fire Richmond in contravention of Respondents’ own forms, and there is no
20 information implying that Respondents urged Penn Line to ignore the language on the forms. In

⁶ Walls very likely was an agent of Penn Line.

1 addition, the record does not show that Respondents were involved in Richmond's hiring or
2 firing or that Penn Line's actions were part of a widespread company practice.

3 Considering the notices on the SSF authorization form and in the absence of evidence of
4 a tacit agreement to ignore those notices, the Commission does not hold LIUNA or LIUNA PAC
5 responsible for Penn Line's actions. Significantly, the SSF authorization form solicited only
6 voluntary contributions from union members, Penn Line appears to have acted contrary to the
7 disclaimers on the form, the activity — though egregious — appears to have been limited to two
8 employees with only small monetary benefits to Respondents, and Respondents have taken
9 remedial actions to prevent future occurrences. Therefore, the Commission exercises its
10 prosecutorial discretion to dismiss the allegations as to LIUNA and LIUNA PAC f/k/a Laborers'
11 Political League and Armand E. Sabitoni in his official capacity as treasurer; reminds them of the
12 requirements of the Act and the Commission's regulations regarding solicitations to an SSF, and
13 closes the file as to them. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 **RESPONDENT:** Laborers' International Union, Local 453

MUR: 6812

7
8 **I. INTRODUCTION**

9 Complainant, Jeffrey Richmond ("Richmond"), a former employee of Respondent Penn
10 Line Services, Inc. ("Penn Line"), alleges that Penn Line unlawfully deducted \$11.51 from his
11 pay and transferred the money to Laborers' International Union, Local 453 ("Local 453") for
12 political contributions to the separate segregated fund ("SSF") of Local 453 and its parent
13 organization, Laborers' International Union of North America ("LIUNA"), before Richmond
14 became a member of Local 453. Richmond also claims that Penn Line fired him for not
15 authorizing additional deductions to the SSF, Laborers' International Union of North America
16 PAC ("LIUNA PAC"). Local 453 does not deny the allegations, but asserts that it was unaware
17 of Penn Line's actions and should not be held responsible for them.

18 Based on the available information, the Commission exercises its prosecutorial discretion
19 and dismisses the allegations as to Local 453 because the SSF authorization form solicited only
20 voluntary contributions from union members, Penn Line appears to have acted contrary to the
21 disclaimers on the SSF authorization form, the activity appears to have been limited to two
22 employees with only a small resulting benefit to the SSF, and Local 453 has taken remedial
23 actions to prevent future occurrences. The Commission also reminds Local 453 of the
24 requirements of the Act and the Commission's regulations regarding solicitations to an SSF and
25 closes the file as to it.

1 **II. FACTS**

2
3 Penn Line is a Pennsylvania corporation that operates a construction business in West
4 Virginia. Local 453 Resp. at 1. LIUNA is an international labor organization, and the majority
5 of its members are construction workers. Local 453 Resp. at 1. Local 453, an affiliate of
6 LIUNA, represents Penn Line workers. Local 453 Resp. at 1. LIUNA PAC is an SSF connected
7 with LIUNA. *See* Amended Statement of Organization (filed October 8, 2014).

8 On July 10, 2012, Orvil Walls, a Penn Line supervisor, hired Richmond as a
9 driver/laborer. Jeffrey Richmond Aff. at 1 (Apr. 21, 2014) ("Richmond Aff."). Although Walls
10 told Richmond over the phone that the position was a "union job," Richmond was not given an
11 application to join Local 453. *Id.* at 1-2. When Richmond got his first paycheck around July 20,
12 2012, he noticed several deductions labeled "Employee Assm" and "Employee Dedu." *Id.* at 2.
13 Richmond called Jamie Gross of Penn Line's Payroll Department, who told Richmond that the
14 deductions were union deductions. *Id.* The deductions included political contributions to
15 LIUNA PAC, a state SSF called West Virginia Laborers District Council PAC, and an entity
16 called Laborers Organizing Fund. Compl. at 2, Attach. 3.

17 In July or August 2012, Richmond spoke with "a man" at Local 453's office about
18 joining the union, who told him to have Penn Line contact Local 453 directly. Richmond Aff. at
19 3. Richmond relayed that instruction to Gross. *Id.* On or about October 1, 2012, Richmond
20 received a union membership form in the mail from Gross. *Id.* Richmond signed the portion of
21 the form to join the union because he claims Walls and other coworkers told him that union
22 membership was required. *Id.* The union membership form included a payroll deduction section
23 for political contributions to LIUNA PAC. That section stated that such deductions were

1 voluntary, the individual could refuse to contribute without reprisal, the union could not favor or
2 disadvantage the employee based on his or her refusal or the amount of the contribution, the
3 contributions would be used for political expenditures or contributions to federal, state, or local
4 elections, and the dollar amounts on the form were merely suggestions. *Id.*, Attach. 1.

5 Richmond submitted the completed union form, but he did not sign the section
6 authorizing deductions to LIUNA PAC. Richmond Aff. at 3, Attach. 1. On October 15, 2012,
7 Walls informed Richmond that his union form was being returned to him to authorize SSF
8 deductions, and that he had to do so. *Id.* The next day, Richmond told Walls that he would not
9 authorize the deductions "for moral reasons," and Walls told him that "it was up to [him]." *Id.*
10 About three hours later, however, Walls told Richmond that he had been told that he could "take
11 [Richmond] home" if he "would not join the Unions."¹ *Id.* Richmond refused again, Walls took
12 him home, and Penn Line fired him. *Id.* At the time Penn Line fired Richmond, it had deducted
13 \$11.51 in unauthorized federal contributions to LIUNA PAC from his pay.²

14 Richmond filed two lawsuits following his termination — one against Penn Line in state
15 court and another against Penn Line and Local 453 with the NLRB. Local 453 Resp. at 4. Both
16 actions were resolved through settlement agreements. *Id.* Available information shows that
17 Penn Line paid \$928.98 to Richmond and \$2,400 to his lawyers in the state court settlement, but
18 it did not admit liability. Penn Line also paid Richmond \$10,401.77 (for back pay, medical
19 expenses, uniforms, interest, and withheld union dues and political deductions) in the NLRB

¹ Presumably, Walls was referring to Richmond authorizing future SSF contributions because Richmond had already agreed to join Local 453.

² Penn Line deducted a total of \$827.47 in union dues/fees and political contributions to the Unions' state and federal SSFs from Richmond's wages during his employment.

1 settlement. Local 453 also reimbursed Richmond \$45.44 for state and federal political
2 deductions. Local 453 Resp. at 4. Local 453 notes that the NLRB settlement is not an admission
3 of liability. Local 453 Resp. at 4

4 As part of the NLRB settlement, Local 453 agreed to take prospective remedial measures.
5 Local 453 Resp. at 4. Local 453 agreed to mail and post notices of employees' federal labor
6 rights at prominent sites at its facilities, to stop using Penn Line to distribute its political
7 contribution form, and to stop accepting SSF contributions from Penn Line without the required
8 authorization. Local 453 Resp. at 4, Attach 1. Available information shows that Penn Line also
9 agreed to stop coercing political contributions to LIUNA PAC, to provide training to its field
10 personnel, and to mail and post similar notices of employees' federal labor rights at prominent
11 sites at the company.

12 During the NLRB action, it was further determined that there may have been one other
13 instance of unauthorized deductions, and that employee was reimbursed \$36.62. Additional
14 details regarding that employee's payroll deductions were not provided.

15 The unauthorized payroll deductions, Walls's coercive actions seeking authorization for
16 SSF deductions, and the wrongful termination are undisputed. Local 453, however, asserts that it
17 was unaware of Penn Line's actions, and it should not be held responsible for them because Penn
18 Line was not its agent. Local 453 also notes that the SSF deduction form properly informs
19 employees of their rights. Local 453 Resp. at 2-3. Local 453 states that it receives only union
20 dues and did not receive the alleged LIUNA PAC deductions. Local 453 Resp. at 2-3.

1 **III. LEGAL ANALYSIS**

2 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and the
3 Commission's regulations, labor organizations are prohibited from making a contribution in
4 connection with a federal election, and a political committee is prohibited from knowingly
5 accepting or receiving such contributions. 52 U.S.C § 30118(a) (formerly 2 U.S.C. § 441b(a));³
6 11 C.F.R. § 114.2(b), (d). Labor organizations are permitted to establish and solicit political
7 contributions to an SSF. 52 U.S.C § 30118(b)(2)(C) (formerly 2 U.S.C. § 441b(b)(2)(C));
8 11 C.F.R. § 114.1(a)(2)(iii). A labor organization or its SSF may only solicit contributions from
9 the organization's members and their families. 52 U.S.C § 30118(b)(4)(A)(ii) (formerly
10 2 U.S.C. § 441b(b)(4)(A)(ii)); 11 C.F.R. § 114.5(g)(2).

11 An SSF is prohibited from making contributions or expenditures "by utilizing money or
12 anything of value secured by physical force, job discrimination, or financial reprisals, or the
13 threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
14 required as a condition of membership in a labor organization or as a condition of employment
15 " 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)); *see also*
16 11 C.F.R. § 114.5(a)(1) (same). All contributions to an SSF must be voluntary and without
17 coercion. *See* 52 U.S.C § 30118(b)(3) (formerly 2 U.S.C. § 441b(b)(3)); 11 C.F.R. § 114.5(a);
18 *see also* Advisory Op. 2003-14 (Home Depot) (same). To ensure that contributions solicited for
19 an SSF are voluntary, the Act and the Commission's regulations make it unlawful for any person
20 to solicit a contribution to an SSF without informing the employee of the political purpose of the
21 SSF and of the right to refuse to contribute to the SSF without reprisal. 52 U.S.C

³ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 § 30118(b)(3)(B)-(C) (formerly 2 U.S.C. § 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(3)-(4)).

2 The term "person" includes a corporation or a labor organization. 52 U.S.C § 30101(11)
3 (formerly 2 U.S.C. § 431(11)). In addition, if the SSF or connected organization suggests a
4 guideline for contribution amounts, the solicitation must state that the guideline is merely a
5 suggestion, that the member is free to contribute more or less than the guideline suggests, and
6 that the union will not favor or disadvantage anyone because of the amount of the contribution or
7 a decision not to contribute. 11 C.F.R. § 114.5(a)(2), (5). A solicitation may be coercive if the
8 requisite notices are not given. *See* Conciliation Agreement IV.7, MUR 5337 (First Consumers
9 Nat'l Bank) (conciliating prohibited facilitation of national bank contributions to a state SSF).

10 Richmond alleges that Local 453 unlawfully received and used the unauthorized and
11 involuntary contributions deducted from his wages before and after he became a member.
12 Although Local 453 does not dispute that Penn Line deducted and transferred these funds for
13 LIUNA PAC, it asserts that it was unaware of Penn Line's actions, did not authorize them, and
14 that Penn Line was not its agent. Though the Commission has found principals liable for agents'
15 acts within the scope of their actual authority, the unusual facts of this case — a corporation
16 coercing contributions to a *union's* SSF — suggest that it would not be appropriate to do so here.

17 Neither the Act nor the Commission's regulations includes a general definition of agent.⁴
18 The Commission, however, has defined the term "agent" in regulations addressing coordinated
19 and independent expenditures at 11 C.F.R. § 109.3 and the soft money ban at 11 C.F.R.

⁴ It does not appear that Penn Line would qualify as LIUNA PAC's collecting agent because it is not related to that SSF. *See* 11 C.F.R. § 102.6(b)(1); Advisory Opinion 1998-25 (Mason Tenders) (by definition, a collecting agent must be related to the SSF and may include such entities as the connected organization of the SSF and a branch or local unit of the connected organization). In this case, Local 453 or LIUNA could be collecting agents for LIUNA PAC. *See* 11 C.F.R. § 102.6(b)(1)(iv).

1 § 300.2(b). The Commission has defined "agent" for purposes of implementing the Bipartisan
2 Campaign Reform Act of 2002 as "any person who has actual authority, either express or
3 implied." *See* 11 C.F.R. §§ 109.3, 300.2. The Commission has explained that "actual authority
4 is created by manifestations of consent (express or implied) made by the principal to the agent."
5 *See* 71 Fed. Reg. at 4976 (citing Restatement (Second) of Agency § 710 (1958)). The
6 Commission has recognized that "a person may be an agent as a result of actual authority based
7 on his or her position or title within a campaign organization, political party committee, or other
8 political committee." 71 Fed. Reg. at 4978. A candidate need not explicitly instruct an agent to
9 perform a particular activity on his or her behalf because actual authority can be established by
10 implication. *Id.* (stating that the definition "capture[s] actions by individuals acting under
11 indirect signals from a candidate"). Thus, the Commission's determination turns on the
12 particular facts.

13 Under this case's facts, it is unclear whether Penn Line is an agent of Local 453 under
14 any of the Commission's definitions.⁵ The record does not reflect what actual authority Penn
15 Line had regarding the payroll deductions. The available information consists of Richmond's
16 statement that someone at Local 453's office told him to have Penn Line contact the union so he
17 could join, and his statement that Penn Line sent him the payroll deduction form weeks later.
18 Although it is likely that Penn Line had the authority to distribute the SSF payroll deduction
19 form and to deduct authorized contributions to LIUNA PAC, it is highly doubtful that Penn Line
20 had actual authority to start making union deductions before Richmond was even a union
21 member. Similarly, Penn Line very likely did not have actual authority from Local 453 to

⁵ Walls very likely was an agent of Penn Line.

1 threaten and fire Richmond in contravention of the SSF's own forms and there is no information
2 implying that Local 453 urged Penn Line to ignore the language on the form. In addition, the
3 record does not show that Local 453 was involved in Richmond's hiring or firing or that Penn
4 Line's actions were part of a widespread company practice.

5 Considering the notices on the SSF authorization form and in the absence of evidence of
6 a tacit agreement to ignore those notices, the Commission does not hold Local 453 responsible
7 for Penn Line's actions. Significantly, the SSF authorization form solicited only voluntary
8 contributions from union members, Penn Line appears to have acted contrary to the disclaimers
9 on the SSF form, the activity — though egregious — appears to have been limited to two
10 employees with only small monetary benefits to the SSF, and Local 453 has taken remedial
11 actions to prevent future occurrences. Therefore, the Commission exercises its prosecutorial
12 discretion to dismiss the allegations as to Local 453; reminds it of the requirements of the Act
13 and the Commission's regulations regarding solicitations to an SSF, and closes the file as to it.
14 *See Heckler v. Cheney*, 470 U.S. 821 (1985).